



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Ernestine Sovo

22 IBIA 209 (08/07/1992)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF ERNESTINE SOVO : Order Affirming Decision  
:   
: Docket No. IBIA 92-10  
:   
: August 7, 1992

Appellants Gene Allen Sovo, Milton Sovo, Jr., Lenniel Ted Sovo, June Eddie Sovo, Donnita Faye Sovo Potts, Denese Renee Sovo, and Diana Gail Sovo seek review of a September 20, 1991, order denying rehearing entered in the estate of Ernestine Sovo, IP OK 4 P 91, by Administrative Law Judge Sam E. Taylor. The denial of rehearing let stand the Judge's June 21, 1991, order approving Ernestine's will. For the reasons discussed below, the Board of Indian Appeals (Board) affirms Judge Taylor's orders.

Ernestine, an unallotted Comanche, died on August 20, 1990. She left a will, executed on October 7, 1974, in which she devised all of her property in equal shares to her three grandchildren, Florence C. Sovo, Sophia Lorene Sovo, and Thomas L. Sovo (appellees). Judge Taylor held a hearing to probate Ernestine's trust estate on May 8, 1991. As a result of that hearing, the Judge approved Ernestine's will and ordered the Bureau of Indian Affairs to distribute her trust estate in accordance with the will.

Appellants sought rehearing, arguing that Ernestine's property should have been passed in accordance with the December 4, 1961, will of Cant-sa (Sallie Nahsuquas), Ernestine's mother. Appellants contended that Ernestine had acquired only a life estate in the property received from Sallie, with the remainder interest passing to the heirs of her body. Because Ernestine had no children living at the time of her death, appellants argued that the property received from Sallie should not have passed to appellees.

Judge Taylor denied rehearing. The Board received appellants' notice of appeal on November 1, 1991. Briefs and/or statements have been received during the course of this appeal from appellants; Florence Sovo; and Eunice Tosee, Thomas L. Sovo, and Sophia Sovo.

Sallie's will left life estates in certain properties to her daughters Eunice and Ernestine and to her sons Milton and Frank. In each case, the remainder interest was devised to the heirs of the body of the life tenant. In the event that the life tenant died without leaving heirs of the body, the remainder interest was to vest in Sallie's other children or the heirs of their bodies.

Frank died without heirs of the body. The remainder interest after his life estate therefore vested in Eunice, Ernestine, and Milton.

Milton died leaving seven children, appellants here. The remainder interest after his life estate vested in his children.

When Ernestine died, her only child had predeceased her, leaving three grandchildren, appellees here. The question before the Board is the proper disposition of the remainder interest after Ernestine's life estate.

Appellants appear to raise two arguments: (1) Ernestine's grandchildren are not the heirs of her body, and (2) the remainder interest following Ernestine's life estate should not pass under her will. Although appellants are technically correct in their second argument, that fact does not affect the ultimate disposition in this estate because they are incorrect in their first argument.

Appellants appear to base their argument that appellees are not the heirs of Ernestine's body on the fact that when their father, Milton, died, the remainder interest passed only to his children, not also to his grandchildren. This fact has no application in the present situation. Heirs of the body are not limited to the first generation. When Milton died, his children, the first generation heirs of his body, were living. Accordingly, the remainder interest vested in those children. If the first generation heirs of the body are deceased, as was the case with Ernestine, the remainder interest passes to the second generation heirs of the body, the grandchildren, or appellees here. Ernestine's only child predeceased her, but her grandchildren are still the heirs of her body. The remainder interest following Ernestine's life estate properly passed to her grandchildren.

Technically, the remainder interest following Ernestine's life estate passed in accordance with the terms of Sallie's will, not Ernestine's will as is suggested in the Judge's order approving Ernestine's will. Here, however, Ernestine's will established the same dispositive scheme as Sallie's will: the remainder interest passed to Ernestine's three grandchildren. Although it might have been less confusing for the Judge to have said that the remainder interest in those properties in which Ernestine received a life estate from Sallie passed to appellees under the terms of Sallie's will, the fact that he did not do so would, at most, constitute harmless error under the circumstances of this case. The fact remains that the remainder interest properly vested in appellees. <sup>1/</sup>

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's September 20, 1991, order denying rehearing is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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<sup>1/</sup> On July 21, 1992, Judge Taylor issued an order amending supplemental order determining remainder interest after life estate in Sallie's estate. This order properly indicates that the remainder interest following Ernestine's life estate passed to her three grandchildren in accordance with the terms of Sallie's will.